

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 1024*

Short Title: Support Shellfish Industry. (Public)

Sponsors: Representatives Boswell, McElraft, Shepard, and Speciale (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Appropriations

May 30, 2018

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE ADDITIONAL SUPPORT FOR THE STATE'S SHELLFISH
3 INDUSTRY BY REFORMING AND MODERNIZING THE STATUTES GOVERNING
4 SHELLFISH AND AQUACULTURE BOTTLAND LEASING AND BY
5 APPROPRIATING FUNDS TO STUDY THE IMPACT OF OYSTER RESTORATION ON
6 NUTRIENT REDUCTION LEVELS.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. SHELLFISH AQUACULTURE REFORMS**

10
11 **SHELLFISH BOTTOM LEASING AMENDMENTS**

12 **SECTION 1.1.(a)** G.S. 113-202 reads as rewritten:

13 **"§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued**
14 **prior to January 1, 1966.**

15 (a) To increase the use of suitable areas underlying coastal fishing waters for the
16 production of shellfish, the Secretary ~~may~~ shall have the discretionary authority to grant shellfish
17 cultivation leases to persons ~~who reside in North Carolina~~ under the terms of this section when
18 the Secretary determines, in accordance with his duty to conserve the marine and estuarine
19 resources of the State, that the public interest will benefit from issuance of the lease. Suitable
20 areas for the production of shellfish shall meet the following minimum standards:

- 21 (1) The area leased must be suitable for the cultivation and harvesting of shellfish
22 in commercial quantities.
- 23 (2) The area leased must not contain a natural shellfish bed. For purposes of this
24 subdivision, a "natural shellfish bed" is an area containing at least 10 bushels
25 of shellfish per acre that does not include a previously leased area terminated
26 by the Secretary for failure to meet the requirements of this section within the
27 12 months directly preceding the date of the lease application.
- 28 (3) Cultivation of shellfish in the leased area will be compatible with lawful
29 utilization by the public of other marine and estuarine ~~resources~~ resources near
30 the leased area. Other public uses which may be considered include, but are
31 not limited to, navigation, fishing and recreation.
- 32 (4) Cultivation of shellfish in the leased area will not ~~impinge upon the rights of~~
33 riparian owners unreasonably conflict with the riparian rights of adjacent
34 property owners.



1 (4a) The leased area must be located a minimum of 100 feet from the shoreline of
2 any private property. The 100-foot minimum shall not apply when (i) the
3 adjacent private property is owned by the lease applicant or (ii) the owner of
4 the private property have provided consent in the form of a written and
5 notarized statement.

6 (5) The area leased must not include an area designated for inclusion in the
7 Department's Shellfish Management Program.

8 (6) ~~The area leased must not include an area which the State Health Director has~~
9 ~~recommended be closed to shellfish harvest by reason of pollution waters that~~
10 ~~have been classified as prohibited, restricted, or conditionally approved closed~~
11 ~~with respect to shellfish harvesting at the time of filing of the lease application.~~

12 (7) The area leased under a single lease shall not be less than one-half acre or
13 exceed 10 acres, except in areas designated by the Department as Shellfish
14 Aquaculture Enterprise Areas under subsection (s) of this section.

15 ...
16 (c) No person, including a corporate entity, or single family unit may acquire and hold
17 by lease, lease renewal, or purchase shellfish cultivation leases covering more than 50 acres of
18 ~~public bottoms under shellfish cultivation leases. the acreage of public bottoms set forth in this~~
19 subsection. For purposes of this subsection, the number of acres of leases held by a person
20 includes acres held by a corporation in which the person holds an interest. The Marine Fisheries
21 Commission may adopt rules to require the submission of information necessary to ensure
22 compliance with this subsection.

23 (1) With respect to coastal fishing waters located in and south of Core Sound, the
24 limit is 50 acres. For purposes of this subdivision, Core Sound shall have the
25 definition set forth in Section 1(b) of Chapter 44 of the 1993 Session Laws.

26 (2) With respect to other coastal fishing waters, the limit is 300 acres.

27 For purposes of this subsection, the number of acres of leases held by a person includes acres
28 held by a corporation in which the person holds an interest. The Marine Fisheries Commission
29 may adopt rules to require the submission of information necessary to ensure compliance with
30 this subsection.

31 (d) Any person desiring to apply for a lease must make written application to the
32 Secretary on forms prepared by the Department containing such information as deemed
33 necessary to determine the desirability of granting or not granting the lease requested. Except in
34 the case of renewal leases, the application must be accompanied by a map or diagram made at
35 the expense of the applicant, showing the area proposed to be leased.

36 ...
37 (k) Except as restricted by this Subchapter, leaseholds granted under this section are to
38 be treated as if they were real property and are subject to all laws relating to taxation, sale, devise,
39 inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases
40 properly acknowledged and probated are eligible for recordation in the same manner as
41 instruments conveying an estate in real property. Within 30 days after transfer of beneficial
42 ownership of all or any portion of or interest in a leasehold to another, the new owner must notify
43 the Secretary of such fact. Such transfer is not valid until notice is furnished the Secretary. ~~In the~~
44 ~~event such transferee is a nonresident, the Secretary must initiate proceedings to terminate the~~
45 ~~lease.~~

46 (l) Upon receipt of notice by the Secretary of any of the following occurrences, he must
47 commence action to terminate the leasehold:

48 (1) Failure to pay the annual rent in advance.

49 (2) Failure to file information required by the Secretary upon annual remittance
50 of rental or filing false information on the form required to accompany the
51 annual remittance of rental.

- (3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.
- (4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the rules of the Marine Fisheries Commission.
- (5) Failure to utilize the leasehold on a continuing basis for the commercial production of shellfish.
- ~~(6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.~~
- (7) Substantial breach of compliance with the provisions of this Article or of rules of the Marine Fisheries Commission governing use of the leasehold.
- (8) Failure to comply with the training requirements established by the Marine Fisheries Commission pursuant to G.S. 113-201(c).

...
 (n) Upon final termination of any leasehold, ~~the bottom in question is thrown open to the public for use in accordance with laws and rules governing use of public grounds generally. the Secretary may either (i) re-lease the area to the first qualified applicant to file an application following the procedures set forth in this Article for renewal of a lease or (ii) designate the area as a Shellfish Aquaculture Enterprise Area under subsection (s) of this section.~~ Within 30 days of final termination of the leasehold, the former leaseholder shall remove all abandoned markers and gear denominating the area of the leasehold as a private bottom. The State may, after 10 days' notice to the owner of the abandoned markers thereof, ~~remove the abandoned structure and markers and gears~~ have the area cleaned up. The cost of such removal and cleanup shall be payable by the owner of the abandoned markers and the State may bring suit to recover the ~~costs thereof.~~ costs, including legal fees.

...."
SECTION 1.1.(b) As part of the Shellfish Mariculture Plan required by Section 13.13 of S.L. 2017-57, the North Carolina Policy Collaboratory and the Division of Marine Fisheries shall study and recommend whether the establishment of a Shellfish Mariculture Commission to oversee shellfish bottom leasing and other aspects of shellfish aquaculture would substantially advance and promote the State's shellfish aquaculture industry. The recommendation shall include proposals for additional or reallocated funding as well as proposed legislation necessary to implement the recommendation.

SECTION 1.1.(c) This section becomes effective July 1, 2018.

ADMINISTRATIVE REMEDY FOR SHELLFISH BOTTOM LEASING APPEALS

SECTION 1.2.(a) G.S. 113-202(g) reads as rewritten:

"(g) After consideration of the public comment received and any additional investigations the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person or by certified or registered mail of the decision on the lease application. The Secretary shall also notify persons who submitted comments at the public hearing and requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's decision or another person aggrieved by the decision may appeal the decision to the Shellfish Cultivation Lease Review Committee established under G.S. 143B-289.57(f). A party to an appeal to the Review Committee who is dissatisfied with the Review Committee's decision may commence a contested case by filing a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's Committee's decision. In the event the Secretary's decision decision of the Secretary or the Review Committee is a modification to which the applicant agrees, the lease applicant must furnish an amended map or diagram before the lease can be issued by the Secretary."

SECTION 1.2.(b) G.S. 143B-289.57 is amended by adding a new subsection to read:

"(f) The Chair of the Commission shall appoint a three-member Shellfish Cultivation Lease Review Committee to hear appeals of decisions of the Secretary regarding shellfish

1 cultivation leases issued under G.S. 113-202. The Committee shall include one Commission
 2 member who shall serve as the hearing officer and two public members. One public member
 3 shall have expertise or other relevant experience in shellfish aquaculture, and the other public
 4 member shall have expertise or other relevant experience with respect to coastal property or
 5 property assessment. The Commission shall adopt rules to establish procedures for the appeals
 6 and may adopt temporary rules."

7
 8 **EXPAND SHELLFISH NURSERY AREAS AND UNDER DOCK OYSTER CULTURE**
 9 **SITING**

10 **SECTION 1.3.(a)** G.S. 113-203 reads as rewritten:

11 "**§ 113-203. Transplanting of oysters and clams.**

12 ...

13 (a2) It is unlawful to do any of the following:

- 14 (1) Transplant oysters or clams taken from public grounds to private beds except
 15 when lawfully taken during open season and transported directly to a private
 16 bed in accordance with rules of the Marine Fisheries Commission.
 17 (2) Transplant oysters or clams taken from permitted aquaculture operations to
 18 private beds except from waters in the approved classification.
 19 (3) Transplant oysters or clams from public grounds or permitted aquaculture
 20 operations utilizing waters in the prohibited, restricted or conditionally
 21 approved classification to private beds except when the transplanting is done
 22 in accordance with the provisions of this section and implementing rules.

23 (a3) ~~It~~ Unless the Secretary determines that the nursery of shellfish in an area will present
 24 a risk to public health, it is lawful to transplant seed oysters or seed clams taken from permitted
 25 aquaculture operations that use waters in the prohibited, restricted or conditionally approved
 26 classification to private beds pursuant to an Aquaculture Seed Transplant Permit issued by the
 27 Secretary that sets times during which transplant is permissible and other reasonable restrictions
 28 imposed by the Secretary under either of the following circumstances:

- 29 (1) When transplanting seed clams less than 12 millimeters in their largest
 30 dimension.
 31 (2) When transplanting seed oysters less than 25 millimeters in their largest
 32 dimension.

33"

34 **SECTION 1.3.(b)** G.S. 113-210(c) reads as rewritten:

35 "(c) Issuance. – The Director of the Division of Marine Fisheries shall issue an Under
 36 Dock Oyster Culture Permit only if the Director determines all of the following:

- 37 (1) ~~That~~ If the dock or pier is not located in an area that the State Health Director
 38 has recommended be closed to shellfish harvest due to pollution or that has
 39 been closed to harvest by statute, rule, or proclamation due to suspected
 40 pollution, the owner of the dock or pier has signed a written
 41 acknowledgement that oysters produced under the permit are intended for
 42 restoration purposes and not for consumption.

43"

44 **SECTION 1.3.(c)** This section becomes effective July 1, 2018.

45
 46 **SHELLFISH AQUACULTURE ENTERPRISE AREAS**

47 **SECTION 1.4.(a)** G.S. 113-202 is amended by adding a new subsection to read:

48 "(s) To facilitate shellfish aquaculture opportunities through advanced siting and
 49 preapprovals from relevant federal and State agencies, the Secretary may establish Shellfish
 50 Aquaculture Enterprise Areas. The Secretary shall only issue nontransferrable leases to residents
 51 of North Carolina within designated Shellfish Aquaculture Enterprise Areas. Any leased parcel

1 within a Shellfish Aquaculture Enterprise Area that is relinquished or terminated shall revert to
2 the State and be made available to other applicants. The geographical restrictions on leasing set
3 forth in Section 2 of Chapter 876 of the 1967 Session Laws and Section 1(c) of S.L. 2003-64
4 shall not apply to Shellfish Aquaculture Enterprise Areas established under this subsection."

5 **SECTION 1.4.(b)** G.S. 113-201.1 is amended by adding a new subdivision to read:

6 "(3a) "Shellfish Aquaculture Enterprise Area" means an area designated and
7 permitted by the Department that is subdivided into parcels and made
8 available for shellfish aquaculture leasing."

10 **PART II. REVISE OYSTER STUDIES REPORTING DATES**

11 **SECTION 2.1.(a)** Section 14.11(f) of S.L. 2016-94 reads as rewritten:

12 **"SECTION 14.11.(f)** The University of North Carolina at Chapel Hill shall report the results
13 of its study, including any recommendations and suggested legislation needed to implement the
14 recommendations, to the Fiscal Research Division, the Environmental Review Commission, and
15 the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources
16 no later than ~~December 31, 2018.~~December 31, 2018, which may be extended to June 30, 2019,
17 by written notice to the Fiscal Research Division if the University determines additional time is
18 needed to complete the study."

19 **SECTION 2.1.(b)** Section 13.13(b) of S.L. 2017-57 reads as rewritten:

20 **"SECTION 13.13.(b)** In addition to the study required by Section 14.11(d) of S.L. 2016-94,
21 as amended by subsection (a) of this section, the North Carolina Policy Collaboratory shall also
22 prepare and deliver a Shellfish Mariculture Plan by ~~December 31, 2018.~~December 31, 2018,
23 which may be extended to June 30, 2019, by written notice to the Fiscal Research Division if the
24 Collaboratory determines additional time is needed to complete the study. Except as otherwise
25 prohibited by State or federal law, all State entities shall provide all information, resources, and
26 support deemed relevant by the Collaboratory for the creation of the Shellfish Mariculture Plan.
27 The plan shall be submitted to the Joint Legislative Oversight Committee on Agriculture and
28 Natural and Economic Resources, the chairs of the House of Representatives Appropriations
29 Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate
30 Appropriations Committee on Agriculture, Natural, and Economic Resources, and the Fiscal
31 Research Division and shall consider the following:

32"

33 **SECTION 2.1.(c)** Section 13.13(d) of S.L. 2017-57, as amended by Section 4.1 of
34 S.L. 2017-197, reads as rewritten:

35 **"SECTION 13.13.(d)** The North Carolina Policy Collaboratory, in consultation with the
36 Economic Development Partnership of North Carolina, the Department of Commerce, and the
37 Department of Natural and Cultural Resources, and any other stakeholders the Partnership deems
38 relevant, including the North Carolina Tourism Advisory Board, the North Carolina Restaurant
39 and Lodging Association, the North Carolina Shellfish Growers Association, North Carolina Sea
40 Grant, and the North Carolina Fisheries Association, shall develop conceptual plans and
41 recommendations for economic development related to promotion of the State's shellfish
42 harvesting heritage. The plans and recommendations shall include the creation of a North
43 Carolina Oyster Trail and a ~~North Carolina Oyster Festival~~ other public engagement events. Plan
44 development shall be congruent with the ongoing work of the North Carolina Policy
45 Collaboratory and its stakeholder group as described in this section and shall include
46 recommendations of locations, oversight, governmental support, cost, and timing of when such
47 initiatives should be launched in the future, including, but not limited to, achieving production
48 and acreage benchmarks, in addition to any other information deemed relevant for inclusion. The
49 Collaboratory's recommendations shall be provided no later than December 31, 2018, to the Joint
50 Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the
51 chairs of the House of Representatives Appropriations Committee on Agriculture and Natural

1 and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture,
2 Natural, and Economic Resources, and the Fiscal Research Division. The due date for the report
3 may be extended to June 30, 2019, by written notice to the Fiscal Research Division if the
4 Collaboratory and stakeholders determine that additional time is needed to complete the study.
5 This study, as it may be subsequently amended after submission, shall be included as an appendix
6 to the Shellfish Mariculture Plan required by subsection (b) of this section."
7

8 **PART III. STUDIES**

9 **SECTION 3.1.** There is appropriated from the General Fund to the University of
10 North Carolina at Chapel Hill the sum of one hundred thousand dollars (\$100,000) in
11 nonrecurring funds for the 2018-2019 fiscal year for the University's North Carolina Policy
12 Collaboratory to study the impact of oyster restoration and shellfish mariculture on nitrogen and
13 phosphorus levels in the Pamlico Sound and whether the use of oyster restoration and shellfish
14 mariculture as mitigation or offsets for nutrient input to the Pamlico Sound from the Neuse and
15 Tar-Pamlico river basins could contribute to achievement of the policy and water quality goals
16 of the nutrient strategies for those basins. The Collaboratory's report shall be provided no later
17 than March 1, 2020, to the Joint Legislative Oversight Committee on Agriculture and Natural
18 and Economic Resources, the chairs of the House of Representatives Appropriations Committee
19 on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations
20 Committee on Agriculture, Natural, and Economic Resources, and the Fiscal Research Division.

21 **SECTION 3.2.** The Division of Marine Fisheries of the Department of
22 Environmental Quality shall review real estate owned by the State and allocated to the Division
23 in Carteret, Hyde, and Dare Counties that were acquired with funding from the Waterfront Access
24 and Marine Industry Fund and develop an inventory of sites suitable to be used for commercial
25 aquaculture, hatcheries, or other aquaculture support operations. The Division will also develop
26 (i) a plan to publicize the availability of the sites and (ii) a streamlined process for lease of the
27 sites to potential commercial aquaculture or aquaculture support ventures. The Division shall
28 report on its implementation of this section to the Joint Legislative Oversight Committee on
29 Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than
30 February 1, 2019.
31

32 **PART IV. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

33 **SECTION 4.1.** If any section or provision of this act is declared unconstitutional or
34 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
35 the part declared to be unconstitutional or invalid.

36 **SECTION 4.2.** Except as otherwise provided, this act is effective when it becomes
37 law.